

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act	)	
of 1996	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	

**COMMENTS IN SUPPORT OF  
EMERGENCY STAY PETITION**

CIMCO Communications, Inc. (“CIMCO”), and LDMI Telecommunications, Inc. (“LDMI”), through undersigned counsel, submits this pleading and attached affidavits to provide additional evidentiary support for the Emergency Stay Petition filed by DSCI, InfoHighway, and MetTel (together, “Petitioners”) in the above-captioned proceedings on September 22, 2003. While it is clear that the Emergency Stay Petition meets, on its own, all of the requisite elements for issuance of a stay of the enterprise local switching rules of the *Triennial Review Order* (“TRO”), CIMCO and LDMI provide the following additional information to support and underscore several critical points: (1) *the irreparable harm* that would occur from implementation of the enterprise local switching rules extends beyond the three Petitioners, and would be suffered by CIMCO, LDMI and all other enterprise market CLECs nationwide that use UNE-P; (2) *the states must be given more time* if they are to have any meaningful chance of meeting the rigorous demands of the TRO and (3) *the unnecessarily and uniquely brief 90-day transition period is inadequate* to allow CLECs to migrate their services to any possible alternative arrangement. Because this section of the TRO is therefore contrary to law and would have an immediate and irreparable damaging effect, it must be stayed from becoming effective on October 2, 2003.

CIMCO and LDMI are two of the leading and most experienced integrated communications providers in the midwestern United States. Both were significant players in the telecommunications market in the years prior to the adoption of the Telecommunications Act of 1996, and both recognized the critical importance of the opportunity afforded by the Act to enter the local exchange market to meet the growing demand for “one-stop shopping” of bundled, customized solutions consisting of local, long distance, data, Internet, and managed services. Both companies emphasize service reliability and superior customer care to cater to the specialized and demanding mission critical telecommunications needs of enterprise market customers. CIMCO is based in Oakbrook Terrace, Illinois, and serves mid- and large-sized

business customers throughout the SBC region and the United States. LDMI is the largest integrated communications provider based in Michigan, serving thousands of small and mid-sized businesses in the Great Lakes Region. *See* Declaration of William Dvorak (“Dvorak Decl.”) at ¶ 3; Declaration of Mark Wayne (“Wayne Decl.”) at ¶ 3.

## **I. CIMCO AND LDMI FACE IRREPARABLE HARM WITHOUT A STAY**

For many of the same reasons as the Petitioners, both CIMCO and LDMI would be irreparably harmed without a stay of the portion of the *TRO* that would eliminate unbundled enterprise local switching and impose an unrealistically short transition period for CLECs using these UNEs.

As a significant part of its overall strategy, CIMCO has deployed hundreds of DS-1 UNE-P circuits to business customers for the provision of local telecommunications services. This group of customers is vitally critical to CIMCO, providing nearly 40% of the company’s total revenues.<sup>1</sup> Therefore, its continued ability to provide DS-1-based local telephone services to these enterprise customers is crucial to the company. *See* Dvorak Decl. at ¶ 4.

LDMI has deployed more than 100 DS-1 UNE-P circuits to approximately 90 business customers for the provision of ISDN PRI services. Its DS-1 customer base is a highly valuable and important asset to the company. *See* Wayne Decl. at ¶ 4. Although LDMI has invested in its own switches in the Detroit, Cleveland and Columbus LATAs, these switches do not support ISDN PRI. Therefore, the elimination of UNE-P DS-1s would force LDMI to undertake enormously expensive and difficult upgrades to its switches, or to search for a non-facilities-based means of continuing service to these customers. *See* Wayne Decl. at ¶ 5.

The *TRO* would eliminate CIMCO and LDMI’s access to the facilities they use to provide service to the above customers. As set forth below, the *TRO* deprives CIMCO and LDMI of (1) any reasonable due process means of defending their right to keep these UNEs upon a showing of impairment and (2) any realistic ability to migrate their DS-1 services to any alternative arrangement before the expiration of the short 90-day transition period. CIMCO and LDMI therefore face the very real possibility of the complete loss of their existing enterprise DS-1 customer base even where, with more time to transfer their service, they might be deemed not to be impaired in attempting to self-provision local switching. This summary taking of CIMCO and LDMI’s hard-won and valuable customer base cannot be remedied; once an enterprise customer leaves a competitive provider, especially due to reliability concerns, it is unlikely that the carrier would ever be able to win their business again. *See* Dvorak Decl. at ¶ 13. The damages suffered from such a sudden loss of any significant portion of a customer base cannot readily be calculated, because CIMCO and LDMI would lose not only the direct revenue stream from these customers, but would also suffer enormous damage to their reputation

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<sup>1</sup> Although some of these revenues are derived from services not offered over the UNE-P facility, CIMCO reasonably believes that it could lose more than local service from all or a substantial number of these customers if it is no longer able to offer quality local exchange and other services over a DS-1 circuit. CIMCO’s enterprise customers typically demand a full-service telecommunications provider that is able to meet all of their service needs through a single interface. *See* Dvorak Decl. at ¶ 3-4.

and goodwill, which are the lifeblood of enterprise market services providers. *See* Dvorak Decl. at ¶ 10.

Enterprise customers are highly sensitive to perceived and actual reliability of their telecommunications services providers and are likely to search for alternative providers if their confidence in their existing provider is put into question. At least as importantly, enterprise customers that have doubts as to the reliability of their service provider are unlikely to refer others to the carrier. As companies that have always emphasized superior customer care, customer referrals are one of the most important sources of new business, and the damages from loss of such referrals would be incalculable. *See* Wayne Decl. at. ¶ 6. Therefore, if the enterprise UNE-P rules are permitted to take effect and later reversed – as the Emergency Stay Petition demonstrates is likely – it will be impossible for the Commission or a court to restore CIMCO and LDMI’s business and reputation to its prior condition or to calculate the damages that resulted from the Commission’s error. It is therefore in the interests of justice and the public that the Commission stay the enterprise UNE-P rules pending appeal in order to avoid the significant and irreparable harm that would be suffered by CIMCO and LDMI, other CLECs, and their customers.

## **II. BECAUSE IT WOULD EFFECTIVELY SEAL THE FATE OF ENTERPRISE UNE-P WITHOUT A DEFENSIBLE FINDING OF NON-IMPAIRMENT, THE TRIENNIAL REVIEW ORDER IS LIKELY TO BE REVERSED ON APPEAL.**

The Emergency Stay Petition demonstrates decisively that the Enterprise UNE-P rules are ripe for stay because they are likely to be reversed on appeal. In particular, the Commission would impermissibly frustrate the UNE provisions of the Act by failing itself to complete the impairment analysis for enterprise local switching, and then shackling state commissions with untenable limitations that effectively prevent the states from completing the job that the Commission left unfinished.

While they disagree with the Commission’s finding of non-impairment, CIMCO and LDMI are not presenting an impairment analysis in this narrow pleading. If it were demonstrated that requesting CLECs are not impaired without access to unbundled enterprise local switching, the commenters recognize that they would no longer be entitled to such access under Section 251 of the Telecommunications Act of 1996 (“Act”). However, the Emergency Stay Petition clearly demonstrates that the *TRO* did *not* make the requisite findings to establish non-impairment<sup>2</sup> and that the Commission effectively precluded any further meaningful attempt by CLECs to demonstrate impairment as they are entitled to do under the Act.<sup>3</sup> Because the *TRO* did not establish a factual record for non-impairment, *or* permit further *meaningful* exploration of this issue by the state commissions, it cannot withstand judicial scrutiny.

The Commission may lawfully overturn seven years of federal policy requiring ILECs to unbundle enterprise local switching *only* by affirmatively finding that CLECs are in fact not impaired without such access. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut.*

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<sup>2</sup> *See TRO* at ¶ 454 (recognizing that CLECs may be impaired in some cases without unbundled access to DS-1 UNE-P).

<sup>3</sup> *See* Emergency Stay Petition at 21-26.

*Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (holding that agency changing its course by rescinding a rule is obligated to supply a reasoned analysis of the change beyond that which may be required when an agency does not act in the first instance). Not only does the *TRO* fail to meet that burden, but it acknowledges the opposite, by explicitly recognizing that at least in certain market segments CLECs may remain impaired without access to unbundled local switching.<sup>4</sup> Rather than identifying and preserving unbundling in these market segments, the Commission adopted an overbroad unbundling exemption that would eliminate all enterprise UNE-P DS-1 unbundling; it then ineffectively proposed to cure the overbroad portions of its ruling by permitting state commissions to petition the Commission to restore UNE designations where the impairment standard is in fact met.

However, as demonstrated by the Emergency Stay Petition, the 90-day state review process is so clearly flawed that no court could reasonably conclude that such process could bridge any gap in the Commission's own impairment analysis. Instead, the Commission's national non-impairment finding will have to stand on its own merits – a tall order when the Commission itself has on paper admitted its overbreadth.

Moreover, the *TRO* makes the predestined state proceeding the exclusive “remedy” for correcting the overreach of its non-impairment finding. Thus, if a state chooses not to act, or if it is unable (as seems fated) to meet the impossible challenge put before it given the standards imposed by the *TRO*, the necessary gathering of evidence, and the impossibly short timeframe, no CLEC or consumer can appeal to the Commission to complete the impairment analysis that the Commission left unfinished. The CLECs could have a strong case for impairment but no regulator who could consider it. The Commission has rendered these CLECs “doomed to impairment.”<sup>5</sup> The Commission should therefore stay its enterprise local switching rules at least until it is able to modify them to permit meaningful consideration by the state commissions of the necessary granular considerations inherent in particular markets that may justify unbundling.

### **III. THE 90-DAY TRANSITION PERIOD FOR MASS MIGRATION FROM THE UNE-P PLATFORM IS WHOLLY INADEQUATE**

Even if the elimination of enterprise local switching were supported by a plausible and legally sufficient finding of nationwide non-impairment, the *TRO* would still be fatally flawed because it fails to provide a reasonable transition period, a mechanism that the *TRO* itself recognizes is essential to protect the interests of both CLECs and consumers. The *TRO* established transition periods of three years for mass market UNE-P<sup>6</sup> and line sharing,<sup>7</sup> and the Commission gave states “unlimited discretion” to establish the appropriate transition periods for any loops or transport exempted from unbundling through application of their granular

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<sup>4</sup> See *TRO* at ¶ 454 (recognizing that CLECs may be impaired in some cases without unbundled access to DS-1 UNE-P).

<sup>5</sup> See *Sprint v. FCC*, 274 F.3d 549, 554 (D.C. Cir. 2001) (remanding the Commission's grant of Section 271 authority to SBC in Kansas and Oklahoma because it failed to address claims of price squeeze that would leave CLECs “doomed ... to failure”).

<sup>6</sup> *TRO* at ¶ 532 (transition ends 27 months after end of 9 month review period).

<sup>7</sup> *TRO* at ¶ 264. The line sharing transition rules protect consumer interests further by grandfathering existing circuits indefinitely. The Commission explained that “a grandfathering rule is necessary to prevent consumers who currently rely on line sharing from losing their broadband service.” *Id.*

impairment analysis.<sup>8</sup> These extended transition periods were established to afford user-CLECs the chance to develop alternative strategies and “to avoid significant disruption to the existing customer base service via unbundled local circuit switching so that consumers will continue to have access to their telecommunications service.”<sup>9</sup>

The Commission recognized that “eliminating unbundled access to incumbent LEC local switching on a flash cut basis would substantially disrupt business plans of some competitors.”<sup>10</sup> Accordingly, the Commission found that these CLECs should have the right to keep serving not only existing customers via this platform but also to attract new customers during the period after non-impairment has been established (but before the transition to other facilities is reliably in place). Moreover, the Commission found that competitors should not be compelled to transition off the UNE-P platform until the migration could be accomplished in a seamless and cost-effective manner.<sup>11</sup> Inexplicably, however, the Commission abandoned this logic for enterprise UNE-P and instead imposed a completely unrealistic 90-day transition period during which all CLECs would be required to replace all of their UNE-P DS-1 circuits nationwide, regardless of the impediments – many imposed by the ILECs – to accomplishing such a task. As detailed below and in the attached Dvorak and Wayne Declarations, this unnecessarily truncated transition period would irreparably harm CIMCO and LDMI through the inevitable service disruptions that would be imposed and accompanying loss of customers and revenue through no fault of either CIMCO or LDMI. In short, it would be impossible for CLECs under these circumstances to obtain reasonable alternatives to UNE-P in the limited 90-day transition period afforded by the *TRO*.

**A. A 90-Day Transition Would Be Impossible for CLECs that Presently Do Not Have Any Deployed Local Voice Switches Within the LATA**

Before any migrations from UNE-P to a CLEC switch can occur, the CLEC must deploy infrastructure (i.e., switch), and must be able to reasonably rely upon the availability of a seamless and efficient hot cut process from the ILECs. Until these initial transition activities are completed, it is not reasonable to assume that lines can even start to be migrated off UNE-P.

At present, CIMCO has not deployed any local exchange-capable voice switches. See Dvorak Decl. at ¶ 5. LDMI does not have a local switch within the same LATA as approximately 40% of its UNE-P DS-1 circuits, and its switches in the other LATAs would require significant upgrades before they could support ISDN PRI service. See Wayne Decl. at ¶ 5. Neither CIMCO or LDMI would be able to deploy new local switches and transfer circuits to these switches within the 90-day transition period established by the *TRO*. Procurement and deployment of local voice switches would require (a) facilities identification, acquisition, and deployment; (b) network engineering, planning and deployment; (c) systems engineering, planning and implementation; and (d) regulatory planning and implementation (including

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<sup>8</sup> See *TRO* at fn. 1630.

<sup>9</sup> *TRO* at ¶ 529.

<sup>10</sup> *TRO* at ¶ 529.

<sup>11</sup> See, e.g. *TRO* at ¶¶ 423, 487.

negotiations with various providers and regulators).<sup>12</sup> Dvorak Decl. at ¶ 5. Each of these tasks also requires recruiting, hiring, and training personnel, such as switch engineers, technicians, customer service representatives and provisioners; as well as expending significant management resources to oversee this complex process. *Id.* CIMCO would have to provision and deploy network interconnection, trunking and transport facilities, 911 and E911 facilities, equal access trunks, operator services, IT application systems, and directory assistance services. These requirements would likely impact CIMCO's requirements, among others, for collocation, entrance facilities, and other network architecture. Dvorak Decl. at ¶ 8.

Facilities deployment is merely the first step in the overall conversion process. Each customer must be migrated individually. Because DS1 conversions inevitably result in at least minimal service interruption to heavy-use services that are important to the customer, the CLEC must engage in in-depth planning and coordination with each *individual* customer to ensure the smoothest migration possible that minimizes the interruption of the customer's business. As a result, a significant amount of time must be expended with each customer to coordinate all interrelated aspects of the conversion and to process the conversion during a time period acceptable to the customer given the inevitable service interruption. Given the significant degree of commitment that must be made to each customer, and the volume of customers that would be effected by the new Commission rules, CIMCO and LDMI would not be able to adequately address their customers' needs and expectations in a 90-day period. See Dvorak Decl. at ¶ 7; Wayne Decl. at ¶ 8.

Each of these tasks *by itself* is an involved and very time-consuming process. When the interdependencies among these tasks are taken into account, it is abundantly clear that it would be impossible for CIMCO to covert its existing UNE-P DS-1 customer base to its own switching facilities within the 90-day transition period set forth in the *TRO*. Dvorak Decl. at ¶ 5. In recognition of the significant time and resources necessary to address these same kinds of transition issues, the Commission did not require CLECs to migrate *any* mass market UNE-P circuits until 13 months after the end of the 9-month review.<sup>13</sup> The Commission must recognize the significant complexities that also exist for enterprise facilities. The Commission should therefore stay its enterprise UNE-P rules pending further review of these realities.

## **B. Improved Conversion Processes Are Necessary for DS-1 UNE-P to UNE-L Batch Migrations**

In addition to the CLECs' own deployment pre-requisites for a transition from the UNE-P platform, the Commission recognized that the ILECs' transition processes must be reliable and efficient. In particular, the Commission deferred implementation of any mass market UNE-P transition at least until the ILECs establish satisfactory loop-provisioning practices, including improved hot-cut procedures.<sup>14</sup> However, based upon a misapplication of evidence, the Commission summarily concluded that hot cuts are unnecessary for DS-1 loops

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<sup>12</sup> Amendments to CLEC-ILEC interconnection agreement alone are likely to require more than 90 days to complete. Among other reasons, the parties are not permitted to petition for arbitration until the 135<sup>th</sup> day after negotiations begin.

<sup>13</sup> *TRO* at ¶ 532.

<sup>14</sup> *TRO* at ¶¶ 487-489, 512.

and that therefore no further improvements are needed for hot cuts, or any other loop-provisioning issues, before a transition from UNE-P can begin.

In reaching this conclusion, the Commission cited only a single filing by a CLEC, NewSouth, which stated that “DS-1 loops do not require a hot cut” because the majority of its new customers are being moved from their existing analog service to a new digital loop.<sup>15</sup> By contrast, the customers experiencing conversions as a result of the elimination of DS-1 UNE-P already have existing digital DS-1 loops that must be disconnected from the ILEC switch and reconnected to the CLEC switch. Moreover, in its filing, NewSouth was explaining its experience with line-at-a-time migrations, not sudden transfers of an entire customer base as demanded by the Commission’s rapid transition requirement. SBC does not have any process in place that can assure a reliable, seamless transition of CLECs’ existing DS-1 UNE-P circuits. *See Dvorak Decl.* at ¶ 6. The NewSouth testimony is therefore inapposite to the issue of the appropriate transition period if unbundled local switching is eliminated. Therefore, the Commission should stay any transition requirement for enterprise local switching at least until state commissions approve effective and reliable batch hot cut processes as part of the nine-month proceedings. Pushing forward with the existing 90-day transition clock even where significant impairment from conversion problems is known to exist would be arbitrary, capricious, and contrary to law.

**C. SBC’s Provisioning Practices are Inadequate Even to Assure a Reliable, Seamless Transition to Resale Service Within 90 Days**

The 90-day transition is not only insufficient for a migration to CLEC switches, but is too short a period even for a transition to resale.<sup>16</sup> SBC has no reliable and effective process in place to assure that CLECs’ enterprise-market DS-1 UNE-P lines could be converted en masse to resale within 90 days, or without unreasonable frequency and duration of service outages and malfunction.

CIMCO and LDMI reasonably fear that these conversions would suffer from the same types of problems that occurred with previous migrations. Over the past year, CIMCO has converted approximately 100 DS-1 level circuits from resale to the UNE-P platform obtained from SBC. The conversion process proved to be highly problematic, with numerous operational difficulties being imposed by the LEC. *See Dvorak Decl.* at ¶ 9. Even though the same circuit is used before and after this “conversion” and SBC itself described this only a “billing structure change,” approximately 40% of CIMCO customers suffered significant service interruptions. *See Dvorak Decl.* at ¶ 9. Although CIMCO submitted a single conversion order per circuit, SBC processed a disconnect and a reconnect separately, and not always at the same time or even on the same day. As a result, many CIMCO customers lost service for extended periods, some for more than one day. Even when service was restored, SBC often made other concurrent SBC errors often resulted in other service problems. *See Dvorak Decl.* at ¶ 10.

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<sup>15</sup> NewSouth Fury Reply Aff. at ¶ 6.

<sup>16</sup> At the outset, it must be emphasized that resale is not, and has never previously been considered, an equivalent substitute to UNE-P. *See TRO* at ¶ 102; *UNE Remand Order* at ¶¶ 67-69. *See also* Emergency Stay Petition at 27-28 (resale does not provide the same degree of flexibility for offering vertical services, customized or alternative local calling areas or pricing plans, and therefore is not an attractive option or comparable substitute for UNE-P).

LDMI has experienced similar problems with UNE-P being converted from both resale arrangements and SBC retail services. Approximately 20% of LDMI's customers in these conversions have experienced significant service outages. Wayne Decl. at ¶ 7. Even when service was restored, SBC often made configuration errors that resulted in service problems such as lost features and errors in telephone number assignments. Wayne Decl. at ¶ 7. Because SBC has been unable to handle DS1 conversions in a seamless and efficient manner in the past, it is unreasonable for the Commission to assume that they will be able reasonably perform a nationwide migration from UNE-P to other platforms within 90 days, without at least as many extended service outages and other service problems.

Business customers, particularly large businesses that subscribe to services at a DS-1 level and above, cannot and do not tolerate significant service interruptions and unreliability from their telecommunications services provider. CIMCO's UNE-P DS-1 customers include hospitals, financial institutions, professional services firms, governmental agencies and other entities for which service interruptions have especially severe consequences. See Dvorak Decl. at ¶ 13. Similarly, LDMI provides service to hospitals, call centers hospitals, call centers, and other entities for which reliable telecommunications services are essential and therefore cannot tolerate significant service interruptions and unreliability from their telecommunications services provider. See Wayne Decl. at ¶ 6. The Commission has recognized that "customers experiencing service disruptions generally blame their provider, even if the problem is caused by the incumbent."<sup>17</sup> With past conversions, CIMCO and LDMI expended considerable resources attempting to address the problems caused by these outages. Despite their best efforts to mitigate the impact, they lost numerous customers as a result of these conversion process, and customer satisfaction and customer referral (a significant driver of new revenues) were adversely affected. Another round of conversion-induced service problems would repeat these harms, especially with customers who have been through the experience before. See Dvorak Decl. at ¶ 11.

Even if SBC improved its migration process to eliminate service interruption and degradation, it also has not sufficiently demonstrated that it is capable of performing the volume of enterprise DS-1 migration within the short 90-day transition period. In CIMCO's past experience, SBC has only been able to perform a maximum of 40 resale to UNE-P conversions for CIMCO per quarter. Even when orders were finally accepted for processing, SBC would often take 30 days or more to complete an individual conversion. See Dvorak Decl. at ¶ 11. At SBC's past conversion rate, it would take years for SBC to complete the conversions just to resale. Until SBC and other ILECs can demonstrate their ability to perform batch migrations within a prescribed transition period, the Commission should stay at least the timing requirements of the transition.

In some cases, for economic or other reasons, CLECs will not be able to provide switch-based service to an existing UNE-P DS-1 customer. See Dvorak Decl. at ¶ 5; see also TRO at ¶ 454 (recognizing that CLECs may be impaired in some cases without unbundled access to DS-1 UNE-P). While this fact should under the 1996 Act translate to a continued ILEC obligation to unbundle local switching, in the absence of such a requirement, the Commission

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<sup>17</sup> TRO at ¶ 467.



should ensure that there is an effective process in place for the CLEC to convert its existing circuits to resale, before being pushed off the UNE-P platform. Therefore, the Commission should stay any transition requirement for enterprise local switching at least until state commissions approve an effective batch migration process for UNE-P circuits to resale. These plans could be developed and adopted as part of the state commission nine-month review proceedings.

**D. CIMCO and LDMI Would Suffer Irreparable Harm From The Inadequacy of the Transition Period**

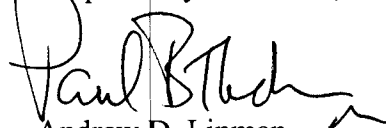
As set forth above, CIMCO and LDMI would be unable to complete the migration of all of their DS-1 UNE-P lines to alternative facilities (if any), and even those lines that may be able to be converted will likely be subject to significant service outages and problems. As a result, CIMCO and LDMI will suffer loss of customers, goodwill, and incalculable amounts of future business. These harms cannot be quantified or remedied, and therefore favor the grant of the Emergency Stay Petition pending appeal of the enterprise local switching rules.

**IV. CONCLUSION**

For the foregoing reasons, and the reasons set forth in the Emergency Stay Petition, the Commission should stay the effective date of its new rules for unbundled enterprise local switching.

SBC has affirmatively not answered questions about how it would handle UNE-P migrations to UNE-L or resale, despite specific queries from CIMCO.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul B. Hudson", with a stylized flourish at the end.

Andrew D. Lipman

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September 26, 2003

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**DECLARATION OF WILLIAM DVORAK**

1. I, William Dvorak, am the CFO of CIMCO Communications, Inc. ("CIMCO").
2. The purpose of my declaration is to provide evidentiary support for the Comments in Support of Emergency Stay Petition filed by CIMCO and LDMI on September 26, 2003 in the above-captioned proceeding. In this declaration, I will explain why a stay of the enterprise customer DS-1 UNE-P prohibition is necessary to prevent CIMCO from suffering irreparable harm.
3. CIMCO is an integrated communications provider that serves businesses with mission critical communications needs. CIMCO provides complete customized solutions consisting of local, long distance, data, Internet, and managed services. Based in Oakbrook Terrace, IL, CIMCO serves customers throughout the SBC region and the United States. CIMCO offers "one-stop shopping" bundled options of these services. CIMCO offers unique solutions to mid- and large-sized business companies, including innovative billing platforms and solutions.
4. CIMCO currently provides hundreds of DS-1 circuits on the UNE-P platform. Customers with at least one of these circuits account for approximately 40% of CIMCO's overall revenue. Because these customers were drawn to CIMCO as a full-service one-stop-shop for all of their telecommunications needs, and now typically demand such bundled offerings, the loss of ability to offer DS-1-based services to these customers would jeopardize this entire revenue stream. Therefore, CIMCO's continued ability to provide DS-1-based local telephone services to these enterprise customers is crucial to the company.
5. To convert these circuits to an alternative platform, numerous complex steps will need to be undertaken by CIMCO. At present, CIMCO has not deployed any local-exchange capable voice switches. Simply to deploy the necessary facilities is a significant undertaking. Necessary elements include (a) facilities identification, acquisition, and deployment; (b) network engineering, planning and deployment; (c) systems engineering, planning and implementation; (d)

regulatory planning and implementation (including negotiations with various providers and regulators). Each of tasks *by itself* is an involved and very time-consuming process. It is not clear that any of these steps can be accomplished by itself during the short implementation period set forth in the FCC's TRO. When the interdependencies among these tasks are taken into account, it is abundantly clear that a conversion to an alternative platform is unfeasible in such a short timeframe. Each of these tasks also requires recruiting, hiring, and training personnel, such as switch engineers, technicians, customer service representatives and provisioners; as well as expending significant management resources to oversee this complex process. In some cases, it would be economically infeasible for CIMCO to provide switch-based service as a replacement for its existing and prospective future DS-1 customers.

6. The conversion of a UNE-P DS-1 level circuit to an alternative platform is not a simple undertaking. Significantly, a hot cut process does not exist for such a conversion. Rather, the conversion process by its very nature will require a service interruption and actual down-time for each customer.
7. The facilities deployment is merely the first step in the overall conversion process. Each customer must be migrated individually. This requires in-depth planning and coordination with each *individual* customer to ensure the smoothest migration possible that minimizes (again, as noted above, it is unfeasible to eliminate) the interruption of the customer's business. As a result, a significant amount of time must be expended with each customer to coordinate all interrelated aspects of the conversion and to process the conversion during a time period acceptable to the customer given the inevitable service interruption.
8. CIMCO's own operational initiatives are just the start of the conversion process. Numerous interactions with the ILEC are required. These include: ordering and provisioning loops for each individual customer circuit; provisioning and deploying network trunking and transport facilities; porting numbers to CIMCO; ordering and deploying E911 facilities, equal access co-carrier trunks, operator services, directory assistance and IT application systems; and reserving and deploying co-location facilities and/or entrance facilities.
9. Over the past year, CIMCO has converted approximately 100 DS-1 level circuits from resale to the UNE-P platform obtained from SBC. The conversion process proved to be highly problematic, with numerous operational difficulties being imposed by the LEC. These difficulties, which will be described below, resulted in numerous service interruptions for CIMCO's business customers. For the first few months of the conversion process, approximately 40% of the circuits that were converted resulted in service interruptions – this despite the fact that there were no physical changes at all required to complete what SBC itself described as a simple “billing structure change.” Even now, service interruptions continue to be experienced on such conversions.
10. Although CIMCO submitted one order per circuit with SBC to process each resale-to-UNE-P conversion, SBC's systems generated between eight and ten separate orders – various disconnect and various new services for *each* circuit. Often the SBC operational systems processed these orders completely separately and at different times. Thus, once the disconnect order was processed, the

CIMCO customer experienced a service interruption until the new order was processed. These outages lasted significant periods of times, reaching over 24 hours in some instances. Even when service was restored, SBC often made other errors that resulted in other service problems. These outages and service problems significantly adversely affected CIMCO's customers. To attempt to mitigate the adverse affects of this SBC-imposed structure, CIMCO expended considerable resources in overseeing what should have been a simple process. The service interruptions hindered CIMCO's customer retention – CIMCO lost numerous customers as a result of this conversion process. Not only did this result in lost revenue, but customer satisfaction and customer referral – i.e., a significant driver of new revenues – were adversely affected.

11. Based on past performance, it is clear that SBC could not handle the volume of the conversion process that would flow from the enterprise UNE-P rules in the Triennial Review Order within 90 days. During CIMCO's resale-to-UNE-P conversion, SBC processed no more than 40 circuit conversions per quarter. Thus, at this rate, SBC would require years to convert CIMCO's approximately existing DS-1 UNE-P circuits. Obviously, this well exceeds the 90-day transition period imposed by the FCC's TRO. Of note, SBC required on average 30 days to process this "billing structure change."
12. CIMCO has attempted without any success to ascertain from the LEC the process that it will need to follow with respect to implementing the TRO. CIMCO's LEC account team has stated that they have specifically been instructed not to discuss any matters related to such implementation. Thus, CIMCO cannot begin any planning regarding either migrating DS-1 level circuits to an alternative platform or the processes that the LEC would impose were CIMCO to retain any such circuits on the LEC platform, e.g., would another "billing structure change" be processed, would new service orders need to be placed, etc.
13. CIMCO's business customers, and particularly large and/or telecommunications-intensive businesses that subscribe to services at a DS-1 level and above, cannot and do not tolerate significant service interruptions and unreliability from their telecommunications services provider. CIMCO's UNE-P DS-1 customers include hospitals, financial institutions, professional service firms, and governmental agencies, for whom reliable telecommunications services are essential. Many of these customers chose CIMCO as their service provider given CIMCO's history of and reputation for reliable service, and may terminate their business with CIMCO if they experience service outages or if reliability is perceived to be in question. Once an enterprise customer leaves a competitive provider, especially due to reliability concerns, it is unlikely that the carrier would ever be able to win their business again. Such service interruptions would consequently cause irreparable harm to CIMCO.
14. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 26<sup>th</sup> day of September, 2003.

  
William Dvorak

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act	)	
of 1996	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	

**DECLARATION OF MARK WAYNE**

1. I, Mark Wayne, am the Executive Vice President of Marketing and Engineering of LDMI Telecommunications, Inc. ("LDMI").
2. The purpose of my declaration is to provide evidentiary support for the Comments in Support of Emergency Stay Petition filed by CIMCO and LDMI on September 26, 2003 in the above-captioned proceeding. In this declaration, I will explain why a stay of the enterprise customer DS-1 UNE-P prohibition is necessary to prevent LDMI from suffering irreparable harm.
3. LDMI is an integrated communications provider that serves businesses with mission critical communications needs. LDMI provides complete customized solutions consisting of local, long distance, data, Internet, and managed services.
4. LDMI has deployed more than 100 DS-1 UNE-P circuits to approximately 90 business customers for the provision of ISDN PRI services. This DS-1 customer base is a highly valuable and important asset to the company.
5. LDMI has deployed Nortel DMS 500 switches in the Detroit, Cleveland and Columbus LATAs. These switches do not support ISDN PRI, and upgrades to support ISDN would cost hundreds of thousands of dollars. Therefore, the elimination of UNE-P DS-1s would force LDMI to undertake enormously expensive and difficult upgrades to its switches, or to search for a non-facilities-based means of continuing service to these customers. Moreover, approximately 40% of LDMI's DS1 UNE-P circuits are in LATAs where it does not have any local switch deployed.
6. LDMI's UNE-P DS-1 customers include hospitals, call centers, and other entities for which reliable telecommunications services are essential and therefore cannot tolerate significant service interruptions and unreliability from their telecommunications services provider. LDMI's DS-1 enterprise customers are highly sensitive to perceived and actual reliability of their telecommunications services providers and are likely to search for alternative providers if their

confidence in LDMI is put into question. At least as importantly, enterprise customers that have doubts as to the reliability of their service provider are unlikely to refer others to the carrier. Customer referrals are one of the most important sources of new business for LDMI, and the damages from loss of such referrals would be incalculable.

7. Based on its past experience with SBC, LDMI is concerned that, at this time, migration of its more than 100 DS1 UNE-P circuits to alternative arrangements would result in significant service outages and problems. LDMI has experienced similar problems with UNE-P being converted from both resale arrangements and SBC retail services. Approximately 20% of LDMI's customers in these conversions have experienced significant service outages. Even when service was restored, SBC often made configuration errors that resulted in service problems such as lost features and errors in telephone number assignments.
8. Because DS1 conversions inevitably result in at least minimal service interruption to heavy-use services that are important to the customer, LDMI engages in in-depth planning and coordination with each customer to ensure the smoothest migration possible that minimizes the interruption of the customer's business. As a result, a significant amount of time must be expended with each customer to coordinate all interrelated aspects of the conversion and to process the conversion during a time period acceptable to the customer given the inevitable service interruption. Given the significant degree of commitment that must be made to each customer, LDMI would not be able to adequately address its customers' needs and expectations if required to displace its more than 100 DS-1 UNE-P circuits within a 90-day period.
9. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 26<sup>th</sup> day of September 2003.

  
Mark Wayne